fact, university research led to groundbreaking discoveries such as the polio vaccine, antibiotics, black-and-white television, barcodes, and, more recently, e-mail and Google.

To help bring more cutting-edge research to the marketplace, my bill creates an incentive for universities to reform their technology policies and practices. The Startup Act requires the top Federal R&D grant-making agencies to give preference to universities that have a proven track record of success in discovering commercial applications for their research.

Fourth, this legislation will enable new businesses to attract and retain highly trained workers, including those who immigrate to our country.

Our country was founded on immigrants who have long contributed to the strength of our economy by starting businesses and creating jobs. In fact, a 2007 study found that more than one-quarter of technology and engineering companies started in our country, from 1995 to 2002, had at least one key founder who was born overseas. These companies produced $52 billion in sales and employed 450,000 workers in 2005 alone.

Research shows that 53 percent of immigrant founders of U.S.-based technology and engineering companies completed their highest degree at an American, a U.S. university. Unfortunately, many foreign-born immigrants leave the States after they complete their studies and return to their home countries to start businesses because they have a hard time securing a visa to stay in the United States.

It does not make much sense to make such an investment in these students and then not give them the opportunity to apply what they have learned by starting a company in the United States that will generate jobs for other Americans. We should be doing all we can to attract and retain highly skilled and entrepreneurial folks so they can work in the field where they have studied and contribute to our economy.

The Startup Act will help retain this talent in two ways.

First, it creates a new visa, called a STEM visa, for any immigrant who graduates with a master's or Ph.D. in science, technology, engineering or math. This will give those graduates the opportunity to stay for up to 1 year beyond their graduation date to find a job and put to work the high-tech skills they learned and that our economy so desperately needs.

Second, the bill creates another visa, called an entrepreneur's visa, for immigrants who register a business and employ at least one nonfamily member within 1 year of obtaining that visa. Once they have satisfied those requirements, the entrepreneur would be allowed to remain here for an additional 3 years if they employ additional employees and further grow their business.

The goal of both these visas is to encourage innovation among highly skilled entrepreneurs and to help grow our country.

Finally, the Startup Act would encourage progrowth State and local policies.

While Federal policies certainly impact the formation and growth of new businesses, State and local policies also play an important role in their creation and growth. In order to identify the States which are the most entrepreneur-friendly, this legislation will create the ''State Startup Business Report'' to analyze State laws and policies. The report will encourage healthy competition and lead to the development and expansion of progrowth policies.

In conclusion, our first priority in Congress should be to create an environment that encourages companies to grow and create jobs. We know our economy cannot continue on the path it is on. In a recent Chamber of Commerce study, 64 percent of small business executives said they do not expect to add to their payroll in the next year, and another 12 percent said they plan to cut jobs.

The Startup Act would encourage American entrepreneurs to do what they do best: dream big and pursue their dreams. The American economy can and will recover when we give American entrepreneurs the tools they need to succeed.

By removing those barriers to growth for new companies, attracting business investment, bringing more research from the laboratory to the marketplace, retaining talented entrepreneurs and skilled employees, and encouraging progrowth policies, we will spur growth in the marketplace and assist in putting people back to work.

The ongoing debate about how to create jobs needs to turn from rhetoric to reality. Nothing in this legislation is designed to be highly partisan. It is designed to make certain Republicans and Democrats can come together with a plan that will make a difference.

It is time for Congress to put policies in place that give job creators more confidence and certainty in the marketplace. If we fail to act as we should, if we continue to ignore the economic problems facing our country, if we let partisanship and bickering get in our way, we will reduce the opportunities the next generation of Americans have to pursue the American dream. It is our greatest responsibility as citizens of our country to make sure the next generation of Americans can live in a country with freedom and liberty and have the opportunity to dream their dreams and see them fulfilled.

I yield back and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is now closed.

AUTHORIZING APPOINTMENT OF ESCORT COMMITTEE

Mr. LEAHY. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join a like committee on the part of the House of Representatives to escort His Excellency Lee Myung-bak, President of the Republic of Korea, into the House Chamber for the joint meeting at 4 p.m., Thursday, October 13, 2011.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF ALISON NATHAN TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

NOMINATION OF SUSAN OWENS HICKEY TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS

NOMINATION OF KATHERINE B. FORREST TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations which the clerk will report.

The bill clerk read the nominations of Alison Nathan, of New York, to be United States District Judge for the Southern District of New York; Susan Owens Hickey, of Arkansas, to be United States District Judge for the Western District of Arkansas; and Katherine B. Forrest, of New York, to be United States District Judge for the Southern District of New York.

The PRESIDING OFFICER. Under the previous order, there will be 2 hours for debate with respect to those nominations, with the time equally divided in the usual form.

Mr. LEAHY. Mr. President, I ask unanimous consent that—it is now 10 minutes past 12—the 2 hours be deemed as having begun at 12 so the first vote will be at 2 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. With the time equally divided as under the normal agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. And that the time in quorum calls be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. With votes today on 3 of the 30 judicial nominations reported favorably by the Judiciary Committee, the Senate will complete action on the nominations that were part of the unanimous consent agreement reached 3 weeks ago, prior to the last recess.

I want to thank the majority leader for pressing at that time for Senate votes on all 27 of the judicial nominations then on the Executive Calendar. Unfortunately, the Republican leadership would consent to vote on only 10 of those long-stalled nominations. So even after today's vote, we are back where we started with 27 judicial nominations on the calendar awaiting final action by the Senate.

Like the nominations we considered last week and earlier this week, all three of the district court nominations the Senate considers today were reported favorably by the committee months ago with strong bipartisan support. They have all been fully considered by the Senate Judiciary Committee. They have all been through a thorough vetting process. They were all ready for a final Senate vote well before the August recess, but we are only considering them now, halfway through October.

As I said when the Senate returned from the September recess with votes on six long-pending nominations, I hope that these votes are an end to the unnecessary stalling by Senate Republicans on nominations. I hope that the Senate will build on these votes and make real progress in addressing the crisis in judicial vacancies that has gone on for far too long, to the detriment of our courts and the American people. Votes on four to six judicial nominees a week cannot be the exception if we are going to bring down a judicial vacancy rate that remains above 10 percent, with 92 vacancies on Federal courts across the country. Votes on four to six nominations would be required throughout the year to make a real difference. I hope my friends on the other side of the aisle will join together with us to end their insistence on harmful delay for delay's sake.

We need a return to regular order where the timely consideration of consensus, qualified nominees is not the exception but the rule. With Republican agreement, we could vote today on all 30 of the nominations reported by the Committee. Of the 27 judicial nominations that will remain on the Executive Calendar tomorrow, 24 of them were reported with unanimous support of every single Democrat and every single Republican serving on the Judiciary Committee. All of them have the support of their home State Senators, including 13 who have the support of Republican home State Senators.

I have served in the Senate for years, with both Republican leadership and Democratic leadership, Republican Presidents and Democratic Presidents. Especially for district courts, when nominees were voted out of the committee with a bipartisan majority or voted out unanimously, they were voice-voted within a matter of weeks. That has changed: under President Obama, Republicans are delaying judges who were voted on unanimously by every Republican and Democrat in the Judiciary Committee. I do not think that is right.

The path followed by the Senate in considering the nomination of Judge Jennifer Guerin Zipps is the path that should be followed with all consensus nominations. Judge Zipps was nominated to fill the emergency judicial vacancy created by the tragic death of Judge Roll in the Tucson, Arizona shootings. I was pleased that, with cooperation from Republican Senators, the time from when the Judiciary Committee reported Judge Zipps' nomination to full Senate consideration was less than 1 month, even including a recess period. It should not take a tragedy to spur us to action to fill a judicial emergency vacancy. Indeed, the time it took the Senate to consider Judge Zipps' nomination was in line with the average time it took for the Senate to consider President Bush's unanimously reported judicial nominations—28 days. It is regrettable that her nomination has become the exception for President Obama's consensus nominations. Those nominations which have been reported with the unanimous support of every Republican and Democrat on the Judiciary Committee have waited an average of 76 days on the Executive Calendar before consideration by the Senate.

Senator GRASSLEY and I have worked together to ensure that the Judiciary Committee makes progress on nominations. Earlier today, the committee reported another five judicial nominations, four of which have Republican home state Senators in strong support. Two of those nominations will fill judicial emergency vacancies in Florida and Utah. There is no need for the Senate to wait weeks and months before voting on these nominations. There is no need for the Senate Republican leadership to continue the unnecessary delays in our consideration of judicial nominations that have contributed to the longest period of historically high vacancy rates in the last 35 years. The number of judicial vacancies rose above 90 in August 2009, and it has stayed near or above that level ever since. We must bring an end to these needless delays in the Senate so that we can ease the burden on our Federal courts so that they can better serve the American people.

More than half of all Americans—almost 170 million—live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans just agreed to vote on those nominations that were reported favorably by Republicans and Democrats on the Judiciary Committee. As many as 25 States are served by Federal courts with vacancies that would be filled by these nominations. Millions of Americans across the country are harmed by delays in overburdened courts. When most people go to court they do not consider themselves Republicans or Democrats; they just know they have a reason to go to court. But they now find many vacant judgeships. They cannot get their cases heard, and justice delayed is, as we know, justice denied.

As I have said, we have 27 judicial nominations remaining on the calendar—24 of them voted for unanimously. I ask the Republican leadership to explain to the American people why they will not consent to vote on the qualified consensus candidates nominated to fill these extended judicial vacancies.

The delays which have led to the damaging backlog in judicial nominations is compounded by the unprecedented attempt by some on the other side of the aisle to create what I consider misplaced controversies about the records of what should be consensus district court nominees. This approach has threatened to undermine the longstanding deference given to home State Senators who know the nominees and the needs of their states best. I am glad we are finally going to vote today on the nominations of Alison Nathan to the Southern District of New York and Susan Hickey to the Western District of Arkansas, but I hope Senators will not raise the kind of selective and unfair questions about the qualifications of these two fine nominees which were never raised about President Bush's judicial nominees.

Alison Nathan is currently Special Counsel to the Solicitor General of New York, having earned the Louis J. Lefkowitz Memorial Achievement Award for her work there last year. Ms. Nathan previously had a successful career in private practice at a national law firm, as a professor at two New York law schools, and as an Associate White House Counsel. She clerked for Supreme Court Justice John Paul Stevens and Judge Betty Fletcher of the Ninth Circuit Court of Appeals.

Ms. Nathan's nomination has the strong support of both her home State Senators. Senator SCHUMER rightfully praised her intellect and her accomplishments when he introduced her to the Judiciary Committee. Half of the Republicans on the Judiciary Committee joined all of the Democrats in voting to report her nomination favorably. However, some in committee raised concerns about Ms. Nathan's qualifications, citing her rating by a minority of the ABA's Standing Committee on the Federal Judiciary as ''not qualified.'' I note that a majority of the ABA Standing Committee rated her ''qualified'' to serve. I also note that Ms. Nathan's ABA rating is equal to or better than the rating received by 33 percent of President Bush's confirmed judicial nominees, who were

supported by nearly every Republican Senator. Her rating is better than the four of President Bush's nominees who were confirmed despite a ''not qualified'' rating by the majority of the ABA's Standing Committee, including two nominees to the Eastern District of Kentucky, David L. Bunning and Gregory F. Van Tatenhove, who were supported by the Republican leader. The Senate deferred to the recommendations of the home State Senators in considering President Bush's nominations and confirmed nominees from Alabama, Utah, Arizona and Oklahoma, among other States, who had received a partial rating of ''not qualified.''

There is no question that the Senate should confirm Ms. Nathan. As her resume shows, she is an accomplished nominee with significant experience in private practice, academia and government service. Twenty-seven former Supreme Court clerks have written to the Judiciary Committee in support of her qualifications, including clerks who worked for the conservative Justices. They write:

Although we hold a wide range of political and jurisprudential views, all of us believe Ns. Nathan has the ability, character, and temperament to be an excellent Federal district court judge. We recommend her for this position without hesitation and without reservation.

I support Ms. Nathan's nomination without reservation, and hope that Senators from both sides of the aisle will join me in supporting this worthy nominee.

The Senate will also vote today to confirm the nomination of Judge Susan Hickey to the Western District of Arkansas. Judge Hickey has the bipartisan support of her home State Senators, Democratic Senator MARK PRYOR and Republican Senator JOHN BOOZMAN, both of whom have praised her background and qualifications in introducing her to the Committee. A majority of Republicans joined every Democratic Senator on the Judiciary Committee in voting to report her nomination. Yet because she spent a significant part of her career as a law clerk and took a hiatus from law practice while on family leave, some have questioned whether she is qualified to serve on the Federal bench. In my view, and the view of her home State Senators—one Democratic and one Republican—those concerns are misplaced.

Currently a State court judge serving in the Thirteenth Judicial Circuit in Arkansas, Judge Hickey was previously a career law clerk for the Honorable Judge Barnes, whom she is nominated to replace. During her confirmation hearing, Judge Hickey testified about the experience she gained as a career law clerk to Judge Barnes, saying that she ''[took] part in all matters that were before the court from the time that the case was filed till the final disposition.'' She testified about the cases she has managed as a State Court Judge, and her experience litigating bench trials and jury trials. The ABA Standing Committee on the Federal Judiciary unanimously rated Judge Hickey ''qualified'' to serve on the Federal bench. I hope that she will be confirmed with bipartisan support.

The Senate today will also finally consider the nomination of Katherine Forrest to fill another vacancy on the Southern District of New York. Currently a Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice, she previously spent over 20 years as a litigator in private practice at the law firm Cravath, Swaine & Moore in New York City, where she was named one of America's Top 50 litigators under the age of 45. The ABA Standing Committee on the Federal Judiciary unanimously rated Ms. Forrest ''well qualified'' to serve, its highest possible rating. The Judiciary Committee favorably reported Ms. Forrest's nomination without dissent three months ago.

In the weeks ahead, I hope that we continue to consider more of the 27 judicial nominees, nearly all of whom are the kind of consensus nominees we could consider within days. We have an enormous amount of ground to recover. At this point in George W. Bush's presidency, the Senate had confirmed 162 of his nominees for the Federal circuit and district courts, including 100 during the 17 months that I was chairman of the Judiciary Committee during his first term. By this date in President Clinton's first term, the Senate had confirmed 163 of his nominations to circuit and district courts. In stark contrast, after today's vote, the Senate will have confirmed only 108 of President Obama's nominees to Federal circuit and district courts. As a result, vacancies are twice as high as they were at this point in President Bush's first term when the Senate was expeditiously voting on consensus judicial nominations. In the next year, we need to confirm nearly 100 more of President Obama's circuit and district court nominations to bring the vacancies down to match the 205 confirmed during President Bush's first term.

We can and must do better to address the serious judicial vacancies crisis on Federal courts around the country that has persisted for over 2 years. We can and must do better for the nearly 170 million Americans being made to suffer by these unnecessary delays.

Again, I apologize for my voice, I thank the ranking member for his help, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, today we continue in our cooperation with the majority as we vote on three more judicial nominees. With a confirmation earlier this week, and six judicial confirmations last week, I want to note the progress we have made.

After today's votes, we will have confirmed 68 percent of President Obama's judicial nominees submitted during his presidency. We remain ahead of the pace set forth in the 108th Congress. We have already held hearings for over 84 percent of President Obama's judicial nominees this Congress, while at this point in the 108th Congress, only 77 percent of President Bush's judicial nominees had their hearing.

This morning, the Judiciary Committee reported five more nominees to the Senate floor, totaling over 77 percent of President Obama's judicial nominees receiving favorable votes out of committee. That is compared to only 72 percent of President Bush's judicial nominees receiving favorable outcomes at this point in the 108th Congress. This indicates the bipartisan effort taking place to move consensus nominees forward, despite what we hear from the other side about obstruction and delay.

The advice and consent function of the Senate is a critical step in the process. In the Federalist Papers No. 76, Alexander Hamilton wrote:

To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.

In other words, the Senate has a role in preventing the appointment of judges who are simply political favorites of the President, or of those who are not qualified to serve as Federal judges.

Also, let me remind my colleagues of what then-Senator Obama stated about this duty 6 years ago in connection with the attempted filibuster of Janice Rogers Brown. Our President, then Senator, said:

Now, the test for a qualified judicial nominee is not simply whether they are intelligent. Some of us who attended law school or were in business know that there are a lot of real smart people out there whom you would not put in charge of stuff. The test of whether a judge is qualified to be a judge is not their intelligence. It is their judgment.

A few months later, on January 26, 2006, when debating the Alito nomination, then-Senator Obama said:

There are some who believe that the President, having won the election, should have the complete authority to appoint his nominee, and the Senate should only examine whether or not the Justice is intellectually capable and an all-around nice guy. That once you get beyond intellect and personal character, there should be no further question whether the judge should be confirmed. I disagree with this view. I believe firmly that the Constitution calls for the Senate to advise and consent. I believe that it calls for meaningful advice and consent that includes an examination of a judge's philosophy, ideology, and record.

You can see some differences between what Senator Obama said on a couple of different occasions on the Senate floor and also how there is some disagreement with what Alexander Hamilton said in the Federalist Papers No. 76.

Our inquiry of the qualifications of nominees must be more than intelligence, a pleasant personality, or a prestigious clerkship. At the beginning of this Congress, I articulated my standards for judicial nominees. I want to ensure that the men and women who are appointed to a lifetime position in the Federal judiciary are qualified to serve. Factors I consider important include intellectual ability, respect for the Constitution, fidelity to the law, personal integrity, appropriate judicial temperament, and professional competence.

In applying these standards, I have demonstrated good faith in ensuring fair consideration of judicial nominees. I have worked with the majority to confirm consensus nominees. However, as I have stated more than once, the Senate must not place quantity confirmed over quality confirmed. These lifetime appointments are too important to the Federal judiciary and the American people to simply rubber stamp them.

Although we have had a long run of confirming consensus nominees, two of the nominees on which we are about to vote come with some reservations. Ms. Nathan and Judge Hickey both have had limited experience in the courtroom. They have failed to meet even the minimum qualifications that the ABA says it uses in the rating process. The guidelines of the Standing Committee of the ABA provide:

> . . . a prospective nominee to the Federal bench ordinarily should have at least 12 years experience in the practice of law.

They further state:

> Substantial courtroom and trial experience as a lawyer or trial judge are important.

I want to emphasize the American Bar Association 12-year standard is not an absolute. However, it is a benchmark that we can use to evaluate the experiences of various nominees. As I have said in the past, being appointed a Federal district judge should be a capstone of an illustrious career. Federal judges should have significant courtroom and trial experience as a litigator or a judge. I would note that last week at our hearing, Justice Scalia expressed concern about the decline in the quality of Federal judges.

With regard to the two non-consensus nominations before us today, I voted to advance them out of the Judiciary Committee so the full Senate could evaluate their qualifications. However, both of these nominees received votes in opposition in our committee. After they were reported, we had our second opportunity to examine their records, and unfortunately I am unable to support them on the floor.

I am, however, pleased to support the nomination of Katherine B. Forrest to be United States District Judge for the Southern District of New York.

In Ms. Nathan's case, she graduated from law school only 11 years ago, and has been admitted to the practice of law for only 8 years. Her questionnaire states she served as associate counsel on approximately six trial court litigation matters. Most of the significant litigation she lists is from her current position in the New York Solicitor General's Office.

In addition, I am concerned about her views on second amendment rights, on the death penalty, on the use of foreign law, and her remarks regarding the Bush administration's war on terror.

Judge Hickey has served as a State court judge for about 1 year. Her questionnaire indicates she has presided over two criminal bench trials—a speeding-DWI case and a second speeding case. Prior to that, she spent about 7 years as a senior law clerk in the Western District of Arkansas. Early in her career, from 1981 to 1984, she was a staff attorney with Murphy Oil Company. Altogether, I am not sure we can get to 12 years of legal-judicial experience—the minimum the American Bar Association committee says a nominee to the courts should have. Furthermore, Judge Hickey has no litigation experience. She has tried no cases.

I want to be very clear here—I am not denigrating the career choices of these nominees, nor am I arguing that the experience they have is unrelated to service as a Federal judge. What I am saying is they do not have enough experience, and this is not the place for on-the-job training.

Let me say a bit more about the background of the nominees we are considering today.

Two nominees have been nominated to serve as United States District Judge for the Southern District of New York—Katherine B. Forrest and Alison J. Nathan.

Since graduating from New York University School of Law in 1990, Ms. Forrest has spent the vast majority of her legal career as an attorney at Cravath, Swayne, & Moore. She served as an associate at the firm from 1990 to 1997 and a partner from 1998 to 2010. While at Cravath, Swayne, & Moore, Ms. Forrest was a generalist litigator who practiced in the areas of antitrust, intellectual property, contracts, employment law, accounting fraud, and securities litigation.

In addition, Ms. Forrest was involved in the management of the firm, serving on the Partner Review Committee. She also ran the firm's Continuing Legal Education Program from 1998 to 2005.

Ms. Forrest has been a deputy assistant attorney general in the Department of Justice's antitrust division since 2010. She is involved in most major matters the division handles, including litigation planning and execution, appellate litigation, and international cooperation. She has a unanimous rating of ''Well Qualified'' by the ABA Standing Committee on the Federal Judiciary.

Ms. Nathan graduated with a B.A. from Cornell University in 1994 and with a J.D. from Cornell Law School in 2000. Upon graduation, she clerked for Judge Betty Fletcher of the Ninth Circuit Court of Appeals from 2000 to 2001. From 2001 to 2002, Ms. Nathan clerked for Justice John Paul Stevens of the Supreme Court of the United States.

Ms. Nathan entered private practice with Wilmer, Cutler, Pickering Hale & Don LLP, serving as an Associate in the Washington, DC, office as well as the New York office. She practiced within the Litigation Group, the Supreme Court and Appellate Litigation Group, and the Regulatory and Government Affairs Group.

From 2006 to 2008, Ms. Nathan worked as a visiting assistant professor of law at Fordham University School of Law. In this role she taught civil and criminal procedure and constitutional law. From 2008 to 2009, Ms. Nathan also served as the Fritz Alexander fellow at New York University School of Law, engaged in legal research.

In 2009, Ms. Nathan secured a position with the White House Counsel's Office. As an associate White House counsel and Special Assistant to the President, Ms. Nathan reviewed legislation, analyzed and advised staff on legal issues, and assisted in the preparation of judicial and executive branch nominees for confirmation hearings.

In July 2010, Ms. Nathan returned to New York and began to work as a Special Assistant to the Solicitor General of New York. A majority of the ABA Standing Committee on the Federal Judiciary rated Ms. Nathan as ''Qualified.'' A minority rated her as ''Not Qualified.''

And finally, Susan Owens Hickey, who is nominated to be a United States District Judge for the Western District of Arkansas. Ms. Hickey graduated from the University of Arkansas School of Law in 1981. In April of that year, she worked for the law firm of Brown, Compton & Prewett, where she worked on the pretrial preparation and trial of a personal injury case that the firm was defending. From 1981 to 1984, Ms. Hickey worked as a staff attorney for the Murphy Oil Corporation. In that role, she worked primarily on issues involving natural gas, securities and corporate law.

From 1984 to 2003, Ms. Hickey was not employed or actively engaged in the practice of law, with the exception of serving as a temporary law clerk. During the summer of 1997 and during the summer of 1998 Ms. Hickey served as a temporary law clerk for the Honorable Harry F. Barnes, United States District Judge for the Western District of Arkansas.

Ms. Hickey returned to work for that same judge in 2003, serving as a senior career law clerk, and she stayed in that position until 2010.

In September 2010, Ms. Hickey was appointed circuit judge for the Thirteenth Judicial Circuit of Arkansas. Ms. Hickey received a unanimous ''Qualified'' rating from the ABA Standing Committee on the Federal Judiciary.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TERRORIST PROSECUTION

Mr. DURBIN. Mr. President, my Republican colleagues have frequently come to the Senate floor to criticize President Obama for his handling of terrorism cases. They have argued regularly and consistently that terrorism suspects should never be interrogated by the FBI and should not be prosecuted in America's criminal courts but, instead, they argue, they should only be held in military detention and prosecuted in military commissions.

Today, I have noticed no one on the Republican side has come to the Senate floor to make those arguments. Why not? It may be because yesterday Umar Farouk Abdulmutallab pled guilty in Federal court to trying to explode a bomb in his underwear on a flight to Detroit on Christmas Day 2009. Mr. Abdulmutallab, who will be sentenced in January, is expected to serve a life sentence.

I commend the men and women at the Justice Department and the FBI for their work on this case. America is a safer country today thanks to them.

My colleagues on the other side were very critical of the FBI's decision to give Miranda warnings to Abdulmutallab. Let me quote Senator MCCONNELL, the minority leader. This is what he said on the floor of the Senate:

> He was given a 50-minute interrogation.

He was referring to Abdulmutallab.

The Senator went on to say:

> Probably Larry King has interrogated people longer and better than that. After which he was assigned a lawyer who told him to shut up.

That is an interesting statement, but here are the facts. Experienced counterterrorism agents from the FBI interrogated Abdulmutallab when he arrived in Detroit. According to the Justice Department, during this initial interrogation, the FBI ''obtained intelligence that proved useful in the fight against al Quida.'' After this initial interrogation, Abdulmutallab refused to cooperate further with the FBI. Only then, after Abdulmutallab stopped talking, did the FBI give him a Miranda warning.

What the FBI did in this case was nothing new. During the Bush administration, the FBI consistently gave Miranda warnings to terrorists detained in the United States.

Here is what Attorney General Holder said:

> Across many administrations, both before and after 9/11, the consistent, well-known, lawful, and publicly-stated policy of the FBI has been to provide Miranda warnings prior to any custodial interrogation conducted inside the United States.

In fact, under the Bush administration, they adopted new policies for the FBI that say that ''within the United States, Miranda warnings are required to be given prior to custodial interviews.''

Let's take one example from the Bush administration: Richard Reid, also known as the Shoe Bomber. Reid tried to detonate an explosive in his shoe on a flight from Paris to Miami in December 2001. This was very similar to the attempted attack by Abdulmutallab, another foreign terrorist who also tried to detonate a bomb on a plane. So how does the Bush administration's handling of the Shoe Bomber compare with the Obama administration's handling of the Underwear Bomber? The Bush administration detained and charged Richard Reid as a criminal. They gave Reid a Miranda warning within 5 minutes of being removed from the airplane, and they reminded him of his Miranda rights four times within the first 48 hours he was detained.

Later, Abdulmutallab began talking again to FBI interrogators and providing valuable intelligence. FBI Director Robert Mueller, for whom I have the highest respect, described it this way:

> Over a period of time, we have been successful in obtaining intelligence, not just on day one, but on day two, day three, day four, and day five, down the road.

Now, how did that happen? How did the FBI get even more information from the suspect after they gave the Miranda warning? The Obama administration convinced Abdulmutallab's family to come to the United States, and his family persuaded him to start talking to the FBI. That is a very different approach than we have heard in previous administrations. Sometimes when a detainee refused to talk, in the Bush administration, in some isolated cases, there were extreme techniques used to try to get information from him, such as waterboarding. But real life isn't the TV show ''24.'' On TV, when Jack Bauer tortures somebody, the suspect immediately admits everything he knows. Here is what we learned during the previous administration: In real life, when people are tortured, they lie. They will lie and say anything to make the pain stop. Oftentimes they provide false information, not valuable intelligence.

Richard Clarke was the senior counterterrorism adviser to President Clinton and President George W. Bush. Here is what he said about the Obama administration's approach:

> The FBI is good at getting people to talk. They have been much more successful than the previous attempts of torturing people and trying to convince them to give information that way.

Many of my colleagues on the other side of the aisle argue that Abdulmutallab should have been held in military detention as an enemy combatant, but terrorists arrested in the United States have always been held under our criminal laws.

Here is what Attorney General Holder said:

> Since the September 11, 2011 attacks, the practice of the U.S. government, followed by prior and current administrations without a single exception, has been to arrest and detain under Federal criminal law all terrorist suspects who are apprehended inside the United States.

Many of my Republican colleagues also argue that terrorists such as Umar Abdulmutallab should be tried in military commissions because Federal courts are not well-suited to prosecuting terrorists.

That argument is simply wrong. Look at the facts. Since 9/11, more than 200 terrorists have been successfully prosecuted and convicted in our Federal courts. Here are just a few of the terrorists who have been convicted in Federal courts and are serving long prison sentences: Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheik; the 20th 9/11 hijacker, Zacarias Moussaoui; Richard Reid, the Shoe Bomber; Ted Kaczynski, the Unabomber; Terry Nichols, the Oklahoma City coconspirator; and now Abdul Abdulmutallab. Compare this with the track record of military commissions. Since 9/11, only 4 individuals have been convicted by military commissions—more than 200 in the courts, 4 in military commissions—and 2 of those individuals spent less than 1 year in prison, having been found guilty by a military commission, and are now living freely in their home countries of Australia and Yemen.

GEN Colin Powell, the former head of the Joint Chiefs of Staff and Secretary of State under President Bush, supports prosecuting terrorists in Federal courts. Here is what he said about military commissions. This is from General Powell:

> The suggestion that somehow a military commission is the way to go isn't borne out by the history of the military commissions.

Many military commissions, when it comes to terrorism cases, are an unproven venue, unlike Federal courts.

Former Bush administration Justice Department officials James Comey and Jack Goldsmith also support prosecuting terrorists in Federal court. Here is what they said:

> There is great uncertainty about the commissions' validity. This uncertainty has led to many legal challenges that will continue indefinitely. . . . By contrast, there is no question about the legitimacy of U.S. Federal courts to incapacitate terrorists.

I say to my colleagues, after a steady parade of speeches on this Senate floor by the Senate Republican leader and others about how we cannot trust our Federal court system to prosecute terrorists, how we should take care to never let the FBI do this important job, the facts speak otherwise.

In Detroit, in the Federal court, we should give credit where it is due. The

FBI did its job. Our courts did their job. The Department of Justice prosecutors did their job. Abdulmutallab pled guilty. He pled guilty because the evidence was overwhelmingly against him. He was convicted openly in the courts of America, which is an important message to send to the rest of the world, and he will pay a heavy price—a life sentence—for his terrible attempt to down an aircraft in the United States. That prosecution and that confession were obtained in our court system.

To argue that military commissions are the only way to go and that using the FBI and Department of Justice and our article III courts as a venue for terrorism is wrong is not proven by the facts, the evidence, or the most recent information coming forward. I would hope some of my colleagues who are now holding up the Defense authorization bill on this issue will at least be hesitant to argue their case now that the Abdulmutallab prosecution has been successfully completed. Over 200 terrorists have been successfully prosecuted in America's courts.

My message to them and I think the message of America to every President is, you use the court, you use the agency you think will be most effective in protecting America. Congress should not tie the hands of any President when it comes to this important prosecution. This success that we have seen in Detroit is evidence that if we give to a President—whether it is a Republican or Democratic President—the tools to prosecute those accused of terrorism, the President can use them wisely, sometimes in military commissions but more often in our court system, an open system that says to the world we can bring the suspected terrorist to justice and do it in a fashion consistent with American values.

I hope all of my colleagues, Democrats and Republicans, will join me in commending the Justice Department and FBI for their success in bringing Abdulmutallab to justice, and I sincerely hope this case will cause some Members of the body to reconsider their opposition to handling terrorism in the criminal justice system.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ECONOMY

Mr. DURBIN. Mr. President, the events of this week are an indication that much needs to be done in Washington to deal with the state of our economy. With 14 million Americans out of work, it is high time that both political parties find a way to develop a plan to move this country forward and to create jobs.

When the President spoke to Congress a little over 4 years ago, he laid out at least the foundation of a plan and later provided the details. But time and again, President Obama has said to the Republican leadership: I am open to your ideas. Bring them forward. Let's put them in a combined effort to make America a stronger nation and to find our way out of this recession.

Unfortunately, we have not heard suggestions from the other side. We had an important vote Tuesday night. Sadly, the Republican filibuster prevailed. Republicans, because they did not want to move the President's bill to consideration on the floor of the Senate, voted—every single one of them—against President Obama's efforts to put America back to work. I do not think that is going to be a position which is easily defended back home. Whether one agrees or disagrees with President Obama, the American people expect Democrats and Republicans to enter a dialog to help this country. We have to give on the Democratic side, and they should be prepared to give on the Republican side, and let's try to find some common ground. There are too many instances where we fight to a face-off and then leave.

The suggestion that yesterday's efforts to pass three free-trade agreements with South Korea, Panama, and Colombia are going to turn the economy around, I am not sure of being close to accurate. I supported two of those trade agreements, and I think they will help create jobs and business opportunities in America in the longer run but in the near term not likely so.

What we need to do is to work on what has been proven to be successful to move this economy forward. Let's start with the basics. Working families struggle from paycheck to paycheck. Many families do not have enough money to get by. They are using food pantries and other help to survive in this very tough economy. So President Obama said the first thing we need to do is to give a payroll tax cut to working families so they have more money to meet their needs. What it boils down to in Illinois, where the average income is about $53,000 a year, is the equivalent of about $1,600 a year in tax cuts for working families. That is about $130 a month, which many Senators may not notice but people who are struggling to fill the gas tank and put the kids in school can use $130 a month.

The President thinks that is an important part of getting America back on its feet and back to work, and I support it. That was one of the elements that was stopped by the Republican filibuster on Tuesday night.

The second proposal of the President is that we give tax breaks to businesses, particularly small businesses, to create an incentive for them to hire the unemployed, starting with our returning veterans. It is an embarrassment to think these men and women went overseas and risked their lives fighting an enemy and now have to come home and fight for a job. We ought to be standing by them, helping them to get to work, and that is one of the elements in the President's bill that was also defeated by the Republican filibuster on Tuesday night.

The President went on to say we ought to be investing our money in America. If we put people to work, let's build something that has long-term value. One of those he suggested was school modernization. I visited some schools around my State, and I am sure in the State of Colorado and other places there are plenty of school districts struggling because the tax base has been eroded by declining real estate values and these districts need a helping hand. When I went to Martin Grove and visited a middle school there, I found great teachers doing the best they could in classrooms where the tiles were falling from the ceiling and where the boiler room should be labeled an antique shop because it was a 50- or 60-year-old operation that was kept together with $150,000 of repairs each year. We ought to buy new equipment and install it in American schools so they can serve us for many years to come.

The same holds true in investing in our infrastructure, whether it is highways, bridges or airports. Make no mistake, our competitors around the world are building their infrastructure to beat the United States, and those who want us to retreat in this battle are going to be saddened by the consequences if they have their way. President Obama said invest this money in putting Americans to work to build our infrastructure, rebuild our schools, build our neighborhoods in a way that serves us for years to come.

The President is also sensitive to the fact that in many parts of America, including Illinois, there are school districts and towns that have had to lay off teachers and firefighters and policemen. It doesn't make us any safer, and it doesn't make our schools any more effective. Part of the President's jobs package is to make sure, for those teachers as well as policemen and firefighters, at least some of their jobs will be saved. In Illinois, over 14,000 of those jobs will be saved by the President's bill.

What really brings this bill to a screeching halt in the debate is the fact the President said we should pay for this. Let's come up with the money that is going to pay for the things I just described. And his proposal is a simple one. It says those who make over $1 million a year will pay a surtax of 5.6 percent—over $1 million a year in income. That is over $20,000 a week in income. These folks would pay a 5.6-percent surtax, and that surtax would pay for the jobs bill.

If the jobs bill works, and I believe it will, I guarantee a thriving American economy will be to the benefit of those same wealthy people. So asking them to sacrifice a little in this surtax is not too much to ask.

Unfortunately, although some 59 percent of Republicans support this millionaires' surtax, not one of them serves in the Senate. We need to have a bipartisan effort to make sure this is paid for in a reasonable way. The alternative we have heard from the other side that mounted this filibuster against President Obama's jobs bill is, we ought to return to the old way of doing things: tax cuts for wealthy people—not new burdens but tax cuts for wealthy people.

They argue the people who make over $1 million a year are the job creators. That is a phrase they use, ''job creators.'' A survey came out yesterday from the Government Accountability Office, and what it said was 1 percent of those making over $1 million a year actually own small businesses. Most of them are investors. Although there is, I am sure, a worthy calling in being an investor, they are not the job creators they are described to be.

So I say to my friends on the other side of the aisle, this notion of protecting those making over $1 million a year at the expense of a jobs program to move America forward is backwards. We have to come together, and I hope we can start as early as next week. We have to find provisions in this jobs bill we can agree on.

I hope the Republicans would agree we should modernize our schools and build our infrastructure in this country. I hope they agree we should not shortchange our schools and our communities when they need teachers and policemen and firefighters. I hope they would agree that it is a national priority to put our returning veterans to work. I certainly think that should be a bipartisan issue.

But the filibuster this week that stopped the President's jobs bill has stopped the discussion. The trade bills yesterday will not make up the difference. We have to focus on putting Americans to work with good-paying jobs right here in our Nation, creating new consumer demand for goods and services which will help businesses at every single level. The President has put his proposal forward and has challenged our friends on the other side of the aisle to step up and put their proposals forward.

My suspicion is that most people in America would be delighted to see a breakthrough in Washington, DC, where Democrats and Republicans actually sat down at the same table and tried to work out a plan to put America back to work. We can do this. In order to do it we have to give on both sides. We have to forget about the election that is going to occur in November 2012 and focus on the state of America's economy right now in October 2011. If we put aside the campaign considerations and focus on the economy, I think we can get a lot done. I trust that there are some on the other side of the aisle who feel the same way. I hope they will break from their leadership on their filibuster and join us in this effort.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I wish to speak for a few moments on the nomination of Alison Nathan to be the United States District Court Judge for the Southern District of New York. This is a highly important position. It is one of the more prestigious courts in the country that handles the Nation's most complex cases. It is my observation, having practiced for over 15 years full time trying cases before Federal judges, that this position is of extreme importance and you need good judgment, good experience, good integrity, proven stability before you give a person a lifetime appointment to such a position. It is an important matter.

I overwhelmingly vote for the nominees of the President. I believe in giving the President deference in those nominations. However, I do believe we need to hold Presidents accountable and to scrutinize the nominations in a fair way and not hesitate to push back and say no if a nominee does not meet those requirements that are necessary to be a good judge.

I believe Ms. Nathan is one of a number of President Obama's nominees who believes that American judges should look to foreign law in deciding cases. She has other indications that suggest she is not committed in a deep and understanding way to the oath Federal judges take. That oath is that you serve under the Constitution and under the laws of the United States. That is so simple and so basic that it goes almost without saying, but it is a part of the historic oath judges take. I believe that oath and commitment to serving under the U.S. Constitution, under the U.S. laws, is critical to the entire foundation of the American rule of law. It is so magnificent. We have the greatest legal system in the world. By and large our Federal judges are excellent and it is a strength both for liberty and civil rights and economic prosperity that we maintain a judiciary at a high level.

One of the things that causes me concern—there are several, but this one I will mention—is her belief that American judges should look to foreign law in deciding cases. This is not a little bitty matter. It is a matter of real national import. It offends people. Some people, nonlawyers, get offended. They think they should not do that. They are right, but just because people are upset about it and get angry about it doesn't mean it is not a deep, legitimate concern and can be a disqualifying factor as to whether a person should be on the bench. What law do they follow? The U.S. law or foreign law?

In a book chapter published less than 2 years ago, Ms. Nathan suggested that the cases leading up to the Supreme Court case of Roper v. Simmons, which was a death penalty case, showed legal progress. In Roper the Court held it is unconstitutional to impose a death penalty even for the most heinous crime if the defendant is under the age of 18 years.

As a matter of policy, I am not sure we should be executing people under 18, although a lot of people think that certain crimes are so bad they ought to be executed. We can disagree. That is a political decision. The question is, does the Constitution prohibit that? I suggest it does not. But if it does, it ought to be interpreted in light of its own words and the laws of the United States, its own import of the Constitution of the United States. Ms. Nathan seemed to commend the decision, however, on a different basis in her chapter. She commended it for ''elaborating upon relevant international and foreign law sources and defending the relevance of the Court's consideration of those sources.''

When describing Justice Kennedy's change of opinion on the issue—he reversed himself—she said it was ''a change that can be attributed to the international human rights advocacy and scholarship that had taken place outside the courtroom walls.''

She also praised the Roper attorneys for their ''strategic and savvy reference to international norms in litigating the case.''

She asserted that the strategy's ''effectiveness holds promise and lessons for future advancement of international law.''

She went further and suggested the reason the Supreme Court does not look to foreign law more often is because the Justices simply do not understand international law arguments—she has been practicing law about 10 years, or 9 at the time she wrote this, so she knows more about the issues related to international law than the Justices who have been on the bench for decades, many of them constitutional professors—rather than demonstrating a knowledge that the judge must serve under the U.S. Constitution and U.S. law and recognizing that foreign law has no place in deciding what our Constitution means.

She stated:

> As these trends [in international law] continue, surely the Court will increase its understanding and 'internationalization' of international human rights law arguments.

She then concluded:

> The presence of the Chinese judicial delegation at the Supreme Court on the day of

the Roper arguments wonderfully symbolized the rich dialogue between international and constitutional norms.

So what she is calling for there is a dialog, presumably between international law and constitutional norms—pretty plain in her writing—not just an off-the-cuff comment but in a serious book expressing her philosophy and approach to law.

I am troubled by that. I believe judges have to be bound by the law and the Constitution. They are not free to impose their view. Justice Scalia and others have criticized—devastated—this international law argument. In my view, the debate that has gone forward in circles including the academy and law schools has clearly been a victory for the people who understand it is our Constitution that governs. We didn't adopt the laws of China, if they were ever enforced, which they are not except by the government when it suits them. We didn't adopt laws in France. We didn't adopt laws in Italy or Brazil or Yugoslavia. That is not what binds us. That is not what judges serve under. They serve under our law.

I think it is a dangerous philosophy. It strikes at the heart of what the Anglo-American rule of law is all about—that law is adopted by the people of the United States and that is the law judges must enforce—laws passed by the people of the United States.

Reliance on foreign law, I believe, has been shown to be nothing more than a tool that activist judges who seek to reach outcomes they desire utilize. It is a way to get out from under the meaning of U.S. law. Why else would one cite it? If they cannot find a basis for their decisions in American law and legal tradition, they look to the laws and norms of foreign countries to justify their decisions. As Justice Scalia aptly described it—and he has hammered this theory—courts employing foreign law, including his own court—the U.S. Supreme Court—are merely ''look[ing] over the heads of the crowd and pick[ing] out its friends.''

What did he mean by that? He means the law, the foundation principles of deciding cases. If they don't like what they find in the United States, they look out over their heads and they find somebody in Italy or Spain or China or wherever, and they say: We need to interpret our law in light of what they do in Germany. How bogus is that as an intellectual legal argument?

Judges who engage in this type of activism violate their judicial oath, I believe. The oath is to serve under our Constitution, our laws. It requires judges to evaluate cases in that fashion—not the laws of other countries. Other countries don't have the same legal heritage we have. They don't value the same liberties and the same fundamental freedoms that are enshrined in our Constitution. The decisions of foreign courts have absolutely no bearing on a decision of a judge in a U.S. court, and nominees who disagree with that fundamentally can disqualify themselves from the bench.

It is very hard for me to believe I should vote to confirm a nominee who is not committed to following our law, who believes they have a right to scrutinize the world, find some law in some other country and bring it home and use that law so they can achieve a result they wanted in the case.

There are a number of other concerns I have with Ms. Nathan's record, not the least of which are her views on an individual's right to bear arms. We have a constitutional amendment on the right to keep and bear arms. The right to keep and bear arms should not be abridged. That is an odd thing, compared to France or Germany or Red China. But it is our law and we expect judges to follow it whether they like it or not. That is what our Constitution says.

Suffice it to say, I believe her record evidences an activist viewpoint. Perhaps if she had more legal experience, she would have a better understanding of the role of a judge. She only just became a lawyer in 2000—11 years ago—and has had limited time in a courtroom.

Evidently, the American Bar Association recognizes this. The ABA gives ratings to judges, and a minority of the members of that committee—not the majority but a minority—rate her ''not qualified.'' Frankly, they are a pretty liberal group, so I don't know if it is so much her views on some of these issues, but probably an actual evaluation of the kind of experience and background she brings and whether she would be qualified to sit on an important Federal district court—the Southern District of New York, one of the premier trial benches in the world, and even in America—and I think it is a matter we should consider.

This is a very serious shortcoming for a number of reasons. Litigating in court is valuable experience. It provides insights to someone who would be a judge. It helps make them a better judge if they have had that experience. It gives them a strong understanding that words have meaning and consequences. When we see people get prosecuted for perjury or we see million-dollar contracts decided this way or that way based on the plain meaning of words, we learn to respect words.

Some of these people out of law schools, with their activist philosophy, seem to think a judge has a right to allow their empathy and their feelings to intervene and decide cases based on something other than the words of the contract or the words of the Constitution. It is a threat to American law. Indeed, it is what President Obama has said a number of times. He believes judges should allow their empathy to help them decide cases.

What is empathy? It is their personal views. Whom do we have empathy for? It depends on whom one likes before they come on the bench. So they are deciding cases based on factors other than the objective facts of the case. I believe the practice of law is a real legal testing ground, in which people can prove their judgment integrity over time. It also provides a maturing experience, where a person learns the import of decisions in how cases turn out and how it impacts their clients.

Let me just say that seasoned lawyers develop reputations. When we have seen them in court many times and they have had experience there, people know if they have good judgment. People know if they are solid. We know they are men and women of integrity. They have that opportunity to establish a reputation. Both the short period of time that Ms. Nathan has spent actually practicing law and some of the troubling positions she has taken over the years justifiably raise serious questions about her understanding of the role of a judge in our system.

Finally, I would note that Concerned Women For America, the Family Research Council, and the Judicial Action Group oppose this nomination. In a letter sent to all Senators today, Concerned Women For America noted that Ms. Nathan's:

> . . . biases are so ingrained and so much the main thrust of her career that it is not rational to believe that she will suddenly change once confirmed as a judge. Rather it is reasonable to conclude she would use her position to implement her own political ideology.

I have reached the view that the facts as I have noted—her open defense of the idea that judges can use sources other than our law to decide cases and her lack of experience and proven record of good judgment and legal skill, the fact that a minority of the ABA Standing Committee on the Federal Judiciary found her not qualified to serve on the bench, justifies a vote in opposition to this nomination. I will not block the nomination. We will have an up-or-down vote. But I do think in my best judgment—and that is all I have, my best judgment—after reviewing her resume, looking at how thin her experience is, and her positions on a number of issues, indicates to me that she has the real potential to be an activist judge, not faithful to the law. For that reason, I will vote no.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BOOZMAN. Mr. President, I agree with the Senator from Alabama. In Arkansas, it is so important that we get good judges nominated and confirmed, and that is why I rise in support of Susan Hickey's nomination as U.S. district judge for the Western District of Arkansas.

Judge Hickey's distinguished career interests reflect her pursuit to serve the interests of justice. As an attorney and now as a circuit judge in my home State of Arkansas, she has earned the respect of the Arkansas legal community and proven she is devoted to fulfilling this important role in our judicial system.

I am confident Judge Hickey's extensive experience with the legal system will serve her well on the Federal bench. Her confirmation will fill the seat of retired Judge Harry Barnes, whom she clerked for before her appointment as circuit judge in the Thirteenth Judicial District. She also worked in a private law firm following her graduation from the University of Arkansas School of Law and also served as an in-house counsel for Murphy Oil.

Judge Hickey has strong bipartisan support for good reason: She has established herself as a dedicated public servant who possesses a strong work ethic and commitment to a fair and impartial legal system. Her experience and impartial demeanor and reputation amongst her peers give me faith that Judge Hickey will do a great job as the U.S. district judge for the Western District of Arkansas. When she was nominated for this position, Arkansans from all across the State expressed their support for her confirmation.

I am honored to recommend that the Senate confirm Judge Susan Hickey as a U.S. district judge for the Western District of Arkansas. I am confident her experience and judicial temperament make her the right person to serve Arkansas as a district judge.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I wish to thank my colleague for being here today and expressing his support for Susan Hickey to be a new Federal district court judge in the Western District of Arkansas. She has a strong record in our State. She is exactly what we need in a Federal judge. The fact that we have both home State Senators, one Democrat and one Republican, supportive of the nomination begins to speak volumes about the kind of person and the kind of reputation Susan Hickey has.

She has been in both the public sector and private sector. She has worked inhouse with an oil company, as Senator BOOZMAN said. But she has also law-clerked for a very solid and well-respected Federal judge.

She is now a State court judge in Arkansas at the State trial court level. She has handled 313 felony criminal cases since she has been on the bench. She brings a lot of experience, and she is exactly the kind of person we need to be on the Federal bench.

When I look at a judge candidate, a judge nominee, I always have three sets of criteria: One, are they qualified? Certainly, she is. She brings very strong qualifications and experience to this position.

Second, can she be fair and impartial? I think that is something that comes up with Susan Hickey over and over and over. From her local bar down in south Arkansas, from the people in the community, the folks who have dealt with her, they all say she is an extremely fair person, and they have no doubt she will be impartial as she puts on that Federal district court robe.

Then, my third criterion, does she have the proper judicial temperament? That, obviously, is subjective because that comes down to their personality and their style. But we want a Federal judge who has great demeanor, who is very good with the law, but also very good with lawyers because, obviously, in a trial court they have a lot of type A personalities in the court, and they have to give the proper appearance to the jury. That is critically important for a district court judge. So I would say, absolutely, yes, she has the right judicial temperament.

So I would strongly encourage all of my colleagues to vote favorably for Susan Hickey. Like I said, she has handled 1,690 total matters in the Federal courts since she has been a law clerk there.

Mr. President, 313 total felony cases have been disposed of in her trial court in south Arkansas down in El Dorado. She has a lot of very solid legal experience. The bottom line is, she is just a good person, and people like her and respect her and they trust her.

I think when our Founding Fathers put together the Federal judiciary, this was the kind of person they wanted. She reflects the values and the attitudes of that part of the State. She is smart. She is hard working. She is going to be fair. Really, we could not ask a whole lot more for any Federal judge in any district, and, certainly, she is going to do a great job down there.

So I am proud to be joined by my friend and colleague from Arkansas to support this nomination. If we support her, and if we confirm her today, we will be joining thousands and thousands of people in south Arkansas who have supported her. We have had hundreds, I know, express support for her in my office. I am certain Senator BOOZMAN has had many support her in his office as well.

I encourage my colleagues to give her very strong consideration. She has been rated unanimously ''qualified'' by the American Bar Association.

There, again, in that both home State Senators support her, the American Bar Association supports her, the Arkansas bar—not the association because they do not do those types of endorsements—but every lawyer I have talked to who knows Susan Hickey thinks she will do an outstanding job, I would like to ask my colleagues to vote for her nomination and I appreciate their consideration.

With that, Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I rise to speak today in support of two excellent nominees for the bench from the Southern District of New York. These two women, Alison Nathan and Katherine Forrest, have different backgrounds, but each in her own way represents the best the New York bar has to offer.

Katherine Forrest is a young lawyer but an extraordinarily accomplished lawyer whose practice has been particularly well suited to the needs of litigants in the Southern District. She was born in New York City, received her BA from Wesleyan University, and her law degree from NYU Law School, one of the best in the country. She has spent the majority of her career in private practice at the prestigious, top-line firm of Cravath, Swaine & Moore, where she was on the National A List of Practitioners. She was named one of the American Lawyer's ''Top 50 Litigators Under 45.'' She currently serves as a Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice, where I know she is very well regarded and has served with great distinction. I look forward to Ms. Forrest's transition from position of service to our country to the other.

I also rise in support of Alison Nathan. I would like to counter some of the arguments that have been made against her on the floor here today.

First, Alison Nathan has tremendous legal experience, albeit that she is young. She is a gifted young lawyer whom New Yorkers would be fortunate to have on the bench, hopefully for a long time. Although she is a native of Philadelphia, she has called New York City her home for some time. She graduated at the top of her class from both Cornell University and Cornell Law School, where she was editor-in-chief of the Cornell Law Review. She worked as a litigator for 4 years at the preeminent firm of WilmerHale and has also served in two of the three branches of government. Ms. Nathan clerked for Ninth Circuit Court of Appeals Judge Betty Fletcher and then for Supreme Court Justice John Paul Stevens. Recently, she served with distinction as a Special Assistant to President Obama and an Associate White House Counsel. She is currently special counsel to the solicitor general of New York. Now, that is a world of experience. It is hard to find better experience from somebody being nominated to the bench.

Some of my colleagues have said: Well, her rating from the ABA was not as good and that was based on experience. That is what the ABA does. They claim, these colleagues, that Ms. Nathan lacks the experience to be confirmed as a judge because only a majority of the ABA rated her qualified, while a minority rated her not qualified.

However, Ms. Nathan has the same qualification ratings as Bush administration judges whom this body confirmed. Specifically, the Senate confirmed 33 of President Bush's nominees with ratings equal to Ms. Nathan, including Mark Fuller and Keith Watkins of Alabama, Virginia Hopkins of the Northern District of Alabama, Paul Cassell of Utah, Frederick Martone of Arizona, and David Bury of Arizona. Are we going to have a different standard for Ali Nathan than for other judges? I sure hope not.

Then some have brought up only recently—actually, very recently—the thought that Ms. Nathan would apply foreign law to our own laws. It is patently false to say that Ms. Nathan has suggested or that she believes it is appropriate for U.S. judges to rely on foreign law or that she herself would ever consider doing so. To the contrary. In response to written questions from Senator GRASSLEY, she said explicitly:

If I were confirmed as a United States District Court Judge, foreign law would have no relevance to my interpretation of the U.S. Constitution.

Let's go through that quote again. This is in reference to a question from Senator GRASSLEY:

If I were confirmed as a United States District Court Judge, foreign law would have no relevance—

''No relevance,'' my emphasis—

to my interpretation of the U.S. Constitution.

My colleagues are also wrong in their suggestion that Ms. Nathan has in the past either relied on foreign law herself or suggested that courts should do so. In the Baze vs. Rees case, she merely described the fact that others, including a law school clinic and Human Rights Watch, had argued in their own briefs that international law could be considered when dealing with questions of pain and suffering. Similarly, in her analysis of the Roper case, Ms. Nathan made an observation about what the Supreme Court had done—specifically, that the Supreme Court had cited foreign law as nondispositive support for their conclusion about the national consensus in the United States about the death penalty. That my colleagues jumped from these two instances in which Ms. Nathan described other peoples' opinions to conclusions about Ms. Nathan's own belief leads me to ask, are judicial candidates not allowed to describe the arguments that others have made? That would be rather absurd. I cannot imagine it is the outcome my colleagues would want, but it is the one to which their arguments naturally lead.

Finally, on national security, where again some from the outside who have criticized Ms. Nathan have brought up national security, here is what she has said:

I think it is important for a Federal district judge to follow the Supreme Court. It is important to our national security for there to be judges who follow the law in this area—

National security—

to the extent questions come before them and that Congress acts as it has in this area.

That is good reason that she is supported by all of the law clerks she served with, including those of Justices Thomas, Scalia, Kennedy, and O'Connor. And obviously those Justices are not Justices who agree with some of the other Justices on the Court, but their law clerks uniformly supported Ali Nathan.

So I would urge my colleagues to support Ali Nathan. She will be an outstanding addition to the bench in the Southern District of New York, as well as Katherine Forrest, who will also be an outstanding addition.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANDERS.) The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Alison J. Nathan, of New York, to be United States District Judge for the Southern District of New York?

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Carolina (Mrs. HAGAN), the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from West Virginia (Mr. MANCHIN), and the Senator from Michigan (Ms. STABENOW) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN), the Senator from Indiana (Mr. LUGAR), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 44, as follows:

[Rollcall Vote No. 164 Ex.]

YEAS—48

Akaka	Franken	Nelson (NE)
Baucus	Gillibrand	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson (SD)	Reed
Bingaman	Kerry	Reid
Blumenthal	Klobuchar	Rockefeller
Boxer	Kohl	Sanders
Brown (OH)	Landrieu	Schumer
Cantwell	Lautenberg	Shaheen
Cardin	Leahy	Tester
Carper	Levin	Udall (CO)
Casey	McCaskill	Udall (NM)
Conrad	Menendez	Warner
Coons	Merkley	Webb
Durbin	Mikulski	Whitehouse
Feinstein	Murray	Wyden

NAYS—44

Alexander	Barrasso	Boozman
Ayotte	Blunt	Brown (MA)
Burr	Heller	Murkowski
Chambliss	Hoeven	Paul
Coats	Hutchison	Portman
Cochran	Inhofe	Risch
Collins	Isakson	Roberts
Corker	Johanns	Rubio
Cornyn	Johnson (WI)	Sessions
Crapo	Kirk	Shelby
DeMint	Kyl	Snowe
Enzi	Lee	Thune
Graham	McCain	Toomey
Grassley	McConnell	Wicker
Hatch	Moran	

NOT VOTING—8

Coburn	Lieberman	Stabenow
Hagan	Lugar	Vitter
Harkin	Manchin	

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Susan Owens Hickey, of Arkansas, to be United States District Judge for the Western District of Arkansas?

The Senator from Vermont.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Carolina (Mrs. HAGAN), the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from West Virginia (Mr. MANCHIN), and the Senator from Michigan (Ms. STABENOW) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN), the Senator from Indiana (Mr. LUGAR), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 165 Ex.]

YEAS—83

Akaka	Feinstein	Murkowski
Alexander	Franken	Murray
Ayotte	Gillibrand	Nelson (NE)
Barrasso	Graham	Nelson (FL)
Baucus	Hatch	Portman
Begich	Heller	Pryor
Bennet	Hoeven	Reed
Bingaman	Hutchison	Reid
Blumenthal	Inhofe	Risch
Blunt	Inouye	Roberts
Boozman	Isakson	Rockefeller
Brown (MA)	Johanns	Rubio
Brown (OH)	Johnson (SD)	Sanders
Cantwell	Johnson (WI)	Schumer
Cardin	Kerry	Sessions
Carper	Kirk	Shaheen
Casey	Klobuchar	Snowe
Chambliss	Kohl	Tester
Coats	Landrieu	Thune
Cochran	Lautenberg	Toomey
Collins	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Coons	McCaskill	Warner
Corker	McConnell	Webb
Cornyn	Menendez	Whitehouse
Crapo	Merkley	Wicker
Durbin	Mikulski	Wyden
Enzi	Moran	

NAYS—8

Burr	Kyl	Paul
DeMint	Lee	Shelby
Grassley	McCain	

NOT VOTING—9

Boxer	Harkin	Manchin
Coburn	Lieberman	Stabenow
Hagan	Lugar	Vitter

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Katherine B. Forrest, of New York, to be United States District Judge for the Southern District of New York?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The majority leader is recognized.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each during that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

IRAN SANCTIONS

Mr. KIRK. With regard to our policy toward Iran and the recent revelation of a potential attack involving not just foreign embassies and ambassadors but Americans, potentially Senators, being killed by a plot hatched by the Iranian Revolutionary Guard and Quds Force, there should be consequences, not just concerns expressed from the administration. We have witnessed a growing aggressiveness by the Iranian regime toward the United States and toward their own people.

For example, recently, an Iranian actress who appeared uncovered in an Australian film was then sentenced to 90 lashes for her so-called crime. With regard to the 330,000 Baha'is, a religious minority in Iran, first they were excluded from all public contracting, then they were told all their children had to leave Iranian universities, and then all their home addresses were registered in secret by the Iranian Interior Ministry.

I would suggest we have seen this movie before in a different decade wearing different uniforms. But this is the bureaucracy necessary to carry out a Kristallnacht in Farsi.

We have seen, for example, the Persian world's first blogger, Hossein Ronaghi, who was thrown into jail simply for expressing tolerance toward other peoples and other religions. Probably most emblematic, we saw the jailing of Nasrin Sotoudeh, a young mother and a lawyer, whose sole crime was to represent Shirin Ebadi, a Noble Prize winner, in the courts of Iran.

We hear and have watched unclassified reports of an acceleration of uranium enrichment in Iran. We even have the irony, according to the International Monetary Fund, that despite comprehensive U.N. and U.S. sanctions—according to the IMF—Iran had greater economic growth last year than the United States and the Iranian indebtedness is only a fraction of U.S. indebtedness. According to the IMF, the United States owes about 70 percent of its GDP in debt held by the public. For Iran, it is only 5.5 percent.

Now the United States has enacted a new round of sanctions against Iran. President Obama signed it into law last year. There were 410 votes in the House, and it was unanimous in the Senate. I worked for many years on a predecessor to that legislation when I was a Member of the House. The record of the administration, and especially our very able Under Secretary of the Treasury David Cohen, has been very good at implementing that bill. He has been very successful in reducing formal banking contacts between American, European and Asian banks and Iran. It is very important, when we look at the situation of how to deal with Iran, that we not see it from Washington's view, looking toward Iran, in which we see an awful lot of banks and an awful lot of transactions shut down, but look at it from Tehran's view, looking back from the United States, and we will see a quickly growing Iranian economy, a growing record of brazen oppression, actresses sentenced to 90 lashes, Noble Prize-winning attorneys thrown in jail, an accelerating nuclear program, and then a decision by the head of the Iranian Revolutionary Guard Corps, Quds Force, to attack the United States.

Long ago, I thought it was a mistake to have the Drug Enforcement Agency left outside of the U.S. intelligence community. Luckily, we reversed that decision and we brought DEA back into the intelligence community. It was a lucky strike that the person who was contacted by the Quds Force to carry out an attack on the United States actually contacted a confidential informant working for the DEA. It was on that lucky break that we had the ability to break this plot. But if we read Attorney General Holder's complaint against the defendant involved, we will see—I believe it is on page 12—a rendition of how, if they could not kill the Ambassador outside the restaurant, it was perfectly OK with the Quds Force operator that a bomb go off involving dozens—if not over 100—of Americans killed. The bonus, he thought, maybe a large number of Senators would be involved. If that was necessary to kill this Ambassador, all the better.

The Treasury Department has designated, finally, the head of the Quds Force under our law. But it is ironic that when we look at the comprehensive record of designations, the Europeans, who actually are not known for their strong-willed backbone on many international questions, have a more far-reaching effect on calling it the way they see it in Iran. Both Europe and America now have a regime to bring forward sanctions and designations against Iranians who are ''comprehensive abusers of human rights.''

Currently, our government has only designated 11 Iranians, where the European Union has designated over 60. One of the people missed by our administration is the President of Iran, Mahmud Ahmadinejad, who often talks about ending the state of Israel. Probably the only head of state of a member of the United Nations who regularly talks about erasing another member of the United Nations from the planet. We also have not designated President Ahmadinejad's chief of staff. We have not designated dozens of people that even the European Union has designated as comprehensive abusers of human rights.

So what should we do when we have uncovered a plot to attack the United States in which the highest levels of the Iranian Revolutionary Guard Quds Force was involved? Thank goodness for the DEA and the rest of the law enforcement and intelligence community of the United States, the plot was foiled, and so no attack was carried out. In my mind, we should take the toughest action possible, short of military action. Is there consensus in the Congress behind what that action should be? I would argue yes.

Senator SCHUMER and I, this summer, put forward what we feel is one of the real, most crippling sanctions the United States could deliver against Iran; that is, to ensure that any financial institution that has any contact with the Central Bank of Iran be excluded from the U.S. market. Because the United States is the largest economy on Earth, we believe nearly every financial institution on the planet will cut its ties to the Central Bank of Iran. That, most likely, would cripple Iran's currency and cause chaos within their economy. You know what. Iran might actually suffer a recession, which it currently is not in, and I think that would be an appropriate price to pay.

When Senator SCHUMER and I reached out to the Senate to ask for support, I was very surprised at the answer because all but eight Senators signed our letter. There were 92 Republicans and Democrats who signed the letter stating it should be the policy of the United States to collapse the Central Bank of Iran, to cripple its currency. After what we learned this week of a plot to kill Americans and to carry out terrorist attacks on the Capital City of the United States, I think that represents appropriate consequences, not just concerns.

We heard from the administration this morning—and while I was encouraged by the diligent work, especially of the Treasury Department, I was concerned about another thing. There are press reports that the administration